IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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Pema Ram vs. State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.38/2003 UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 3.7.2007

PRESENT
HON'BLE MR.PRAKASH TATIA,J.

Mr.Anil Bhandari,for the petitioner.
Mr.OP Boob, Addl. GA for the respondent-State
Mr.Arvind Samdariya, for respondent no.5.

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BY THE COURT:

Heard learned counsel for the parties.

Brief facts of the case are that certain land was originally belonging to four persons who were member of Scheduled Tribe and they surrendered, in fact, transferred this land measuring 15 Bighas 1 Biswa of Khasra no.22 to the Gram Panchayat, Jetpura by registered deed dated 5th Dec., 1966. The Gram Panchayat started enjoying the property and in the year 1986 by the order of the State Government dated 16.1.1986, the land was converted into Abadi land. The Gram Panchayat decided to sell the land by public auction and land was sold to various persons in public auction dated

30th July, 1986. The petitioner in this case is one of the purchaser from the auction purchase. The proceeding was initiated before the District Collector, Sirohi under the provisions of Rajasthan Panchayati Raj Act for cancellation of the Pattas, which were issued to the auction purchasers in pursuance of the auction dated 30th July, 1986. This proceeding of revision was decided by the learned District Collector vide order dated 8th Sept., 1989. The learned District Collector was of the view that since the original Khatedars tenants were member of the Scheduled Tribe, therefore, their land could not have been taken by the Gram Panchayat because of bar of Section 42 of the Rajasthan Tenancy Act, 1956 as well as without passing any consideration. However, the learned District Collector was of the view that in case, if the land would have been surrendered to the State Government then the State Government could have transferred it to the Gram Panchayat. On above ground, the learned District Collector held that since the transfer of the land in favour of the Gram Panchayat itself was wrong, therefore, the auction purchaser cannot get any title to the property in question.

The order of the District Collector dated 8th Sept., 1989 was challenged by filing an appeal by the petitioner. The Revenue Appellate Authority (Second), Jodhpur partly allowed the appeal vide order dated 19.2.1990 (Annex.4) and remanded the mater back to the District Collector, Sirohi with the direction that the learned District Collector may consider the relevant documents and

pass a fresh order.

After remand order dated 19.2.1990, the learned District Collector, Sirohi considered the case of the petitioner alongwith other matters arising out of the same transaction referred above as several persons were auction purchasers. The learned District Collector again reached to the conclusion that auction sale by the Gram Panchayat was illegal on the ground that firstly it was a land of the member of the Scheduled Tribe therefore, it could not be transferred to the Gram Panchayat and secondly, the land was given for public purposes, therefore, it could not have been sold by the Gram Panchayat. The learned District Collector in order dated 19th Dec., 1990 further observed that order of the District Collector converting the land in question by order dated 126.1.1986 is of no meaning.

The petitioner alongwith other persons preferred further appeal before the Revenue Appellate Authority, Pali camp Jodhpur. The said appeal of the petitioner was dismissed by the learned Revenue Appellate Authority, Pali camp Jodhpur on 20.12.1993. Before the Revenue Appellate Authority again the view prevailed was that land of the member of the Scheduled Caste and Scheduled Tribe could not have been transferred in favour of any person, who is not member of Scheduled Caste and Scheduled Tribe respectively.

Learned counsel for the petitioner vehemently submitted that

the land in question was originally belonging to the four persons and they by registered deed transferred the land to the Gram Panchayat. Gram Panchayat is not a person who can have the caste. The Gram Panchayat is a juristic person and transfer to juristic person by the member of Scheduled Caste and Scheduled Tribe is not prohibited by Section 42 of the Rajasthan Tenancy Act. Learned counsel for the petitioner in support of his contention relied upon a single bench judgment of this Court delivered in Gaushala Sri Karanpur Vs. State & Ors reported in 2001(2) WLN 36 and Division Bench judgment delivered in the case of State of Rajasthan & Ors. Vs. Indian Oil Corp. reported in 2003(2) CDR 1502 (Raj.).

Learned counsel for the petitioner further submitted that the learned District Collector has committed serious error of law in holding that the order passed by the learned District Collector itself by exercising power of the State converting the land in question into Abadi is illegal. The learned District Collector had no jurisdiction to observe about the order of the State Government being subordinate to the State and further could not have ignored its own order, which was passed after about 20 years of transfer of land to Government by the Khatedars of the land. In view of the order dated 16.1.1986 of conversion of land to Abadi land, the land in question was not an agricultural land at the time of auction on 30th July, 1986, therefore, the sale by the Gram Panchayat in favour

of the auction purchasers is legal and valid one.

Gram Panchayat filed reply to the writ petition and defended their sale of the plots and stated that Gram Panchayat rightly auctioned the plots and that too, was affected in public interest. In this petition, no reply has been filed by the State to the writ petition.

I considered the submissions of the learned counsel for the parties and perused the record also.

In view of the judgments of this Court in Gaushala Sri Karanpur Vs. State & Ors. and State of Rajasthan & Ors. Vs. Indian Oil Corp. (supra) the transfer of land in favour of juristic person like Gram Panchayat by the members of the Scheduled Tribe is not illegal or void. On the date when the land was auctioned it was recorded as Abadi land. The order of the District Collector converting the land in question to Abadi land was not only the order of District Collector but was passed in delegated powers from the State Government and, therefore, the order was of the State Government. The learned District Collector in collateral proceeding could not have declared the said order of State Government dated 16.1.1986 converting the land into Abadi land as illegal. Therefore, on the date when the land in question was auctioned, it was Abadi land and was vesting in the Gram Panchayat and, therefore, the learned District Collector as well as the Revenue Appellate Authority wrongly applied the provisions of the Rajasthan Tenancy Act, which

are applicable to the matter relating to the agricultural land and not to Abdi land.

In these circumstances, the order of the District Collector dated 19th Dec., 1990 and order of the Revenue Appellate Authority dated 20th Dec., 1993 cannot be sustained and deserves to be quashed and set aside.

In view of the above, the writ petition of the petitioner is allowed and the orders of the District Collector dated 19th Dec., 1990 and Revenue Appellate Authority dated 20th Dec., 1993 are quashed and set aside.

(PRAKASH TATIA), J.

c.p.goyal/-